

FLOOD CONTROL ADVISORY BOARD

MINUTES

May 23, 2001

The monthly meeting of the Flood Control Advisory Board was called to order by Chairman Patel at 2:00 p.m. on Wednesday, May 23, 2001.

Board Members Present: Hemant Patel, Chairman; Shirley Long, Vice Chair; Mike Saager, Secretary; Melvin Martin; Ray Dovalina (for Tom Callow, Ex Officio); Paul Cherrington, Ex Officio.

Board Members Absent: Scott Ward.

Staff Members Present: Tom Johnson, Deputy Chief Engineer; Julie Lemmon, General Counsel; Dick Perreault, CIP/Policy Branch Manager; Tim Phillips, Project Manager; Russ Miracle, Planning Branch Manager; Scott Vogel, Project Manager; Dave Johnson, Regulatory Division Chief; Valerie Swick, Project Manager; Kathy Smith, Clerk of the FCAB; Monica Ortiz, Administrative Coordinator.

Guests Present: Andrew Cooper, City of Goodyear; Jeannette Fish, Maricopa County Farm Bureau; Ed Fritz, MCDOT; Brian Fry, Dibble & Associates; Teri George, David Evans; Erich Korsten, Town of Carefree; Kevin Kugler, City of Goodyear; L. Steve Miller, PEC; Tim Morrison, HDR Engineering; Jerry Zovne, Parsons Corporation.

1) APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 25, 2001

ACTION: It was moved by Mr. Martin and seconded by Mr. Cherrington to approve the minutes as submitted. The motion carried unanimously.

2) LAVEEN AREA CONVEYANCE CHANNEL

Tim Phillips, Project Manager, presented IGA FCD 2000A021, with the City of Phoenix, the Salt River Project, the Maricopa County Department of Transportation and the Flood Control District for the cost sharing, construction and implementation of the Laveen Area Conveyance Channel, including the 43rd Avenue/Southern Avenue Detention Basin.

The IGA provides that the District will design, construct, accept the donated right-of-way, purchase additional right-of-way, and cost share the project. The City will implement the multi-use amenities, execute the development agreements, maintain the completed project, cost share, and assume liability for public use of the project. MCDOT is a cost-share partner in lieu of

relocating the Maricopa Drain, necessary for widening Baseline Road. SRP is a non-cost-sharing partner, but they will relinquish the rights to the Maricopa Drain in lieu of receiving a flow right within the new Channel; operate and maintain the low flow channel; design and construct modifications to the Gila River Indian Community Booster, and consent to jointly use their power line easement with the project. The total project cost is \$21 million, with the District's cost-share capped at \$7 million.

Staff recommended that the Flood Control Advisory Board approve and recommend that the Board of Directors approve IGA FCD 2000A021.

Discussion:

Martin: Is SRP going to abandoned the old floodway?

Phillips: SRP doesn't own the existing floodway, it's the landowners that own it. SRP has agreed to relinquish whatever perceived rights they have, back to the landowners.

ACTION: It was moved by Mr. Dovalina and seconded by Mr. Martin to approve staff recommendations. The motion carried unanimously.

3) RIO VERDE AREA DRAINAGE & FLOODPLAIN MANAGEMENT

Tim Phillips, Project Manager, presented Resolution FCD 2001R009, which authorizes the District to conduct and implement studies in the Rio Verde area to identify and mitigate local and regional flooding, identify floodplains associated with 100-year storm events and to identify flood control infrastructure, if necessary, within the watershed, and to utilize the information derived from existing and future studies to respond to public inquiries concerning flooding risks within the Rio Verde area.

Mr. Phillips mentioned that Supervisor Stapley, District 2, asked the Flood Control District if there was something they could do to inform the residents of what the potential flooding risks are. This Resolution will provide to those involved in land transactions early/advance information regarding potential area flooding risks.

Staff recommended that the Flood Control Advisory Board approve and recommend that the Board of Directors adopt Resolution FCD 2001R009.

Discussion:

Martin: If I were going to buy a piece of property in that area and this Resolution was adopted, would this show up on a title report?

Phillips: Yes, the Resolution has language that identifies the section, township, and range for the entire watershed. When it's recorded, it will be recorded on all the parcels that are bounded by the section, township, and ranges. When someone does a title search, it will come up and they will hopefully call so they can understand what we are doing and what the impacts to them might be.

Martin: If we post that particular area saying that there is more information available if they contact the Flood Control District, are we opening ourselves to liability in other areas that we know studies have been done and we didn't put up any signs or Resolutions?

Lemmon: Generally, government doesn't have to do everything it can do all at the same time. My initial answer would be that you're probably not creating a liability for yourselves; however, if you have similar situations that we're aware of, we might want to consider doing a similar type of Resolution, if they are factually in a similar situation. Generally people don't want

Resolutions – they are concerned about it perhaps as a cloud on the title of their property. We have a law in this state that says a Resolution is just a Resolution, it's not a taking of any kind, it's just notification. If you'd like, I'd be happy to research that.

Martin: I wouldn't have any objections putting the signs up, but I'd like to know what we are opening ourselves for in other areas.

Patel: If we don't have exposure, we should let the District see how this project flies and then consider this method for other areas as well. It's a great idea to try to get people informed, and maybe we want to use this approach more often.

T. Johnson: Quite frequently when we conduct our Area Drainage Master Studies, we'll record a Resolution across those study areas that inform the public that we are doing a study and more particularly we'll let them know that we may be asking for permission to go onto their property to do soils testing or things of that sort. This isn't the first time we've done something like this – in fact it's probably more common than you may think. This is particularly at the request of Supervisor Stapley and seemed like a good way to create a trip wire within the title process to make sure all the buyers and sellers are informed that something was going on and that we are in a position to give them answers.

Saager: Is the consensus for or against this by the people that live up there? Is the main gist of this that when someone goes to buy a piece of property, something will show on the preliminary title report and what the County is allowing potential buyers, during the inspection or feasibility period, to contact the County to make sure that if there is improper drainage or flooding, that they rectify that before they make the actual purchase? Is the procedure then that the County will send out an inspector or implement some kind of system where someone can look it up and decide what can be done?

T. Johnson: My expectation would be that first of all, the property owner is forewarned that something is going on. During their due-diligence it would be incumbent upon them to contact us and ask questions. I don't know that we would send any inspectors out. I'm not sure that that would be required. But information and the results of the study that we have to date would be made available to them for them to peruse and to ask our people questions and then they could make a decision about the property. We wouldn't tell them to buy or not to buy.

Saager: Essentially all we are doing is just tightening our belts from something that really has been in effect, but has never been enforced like it is now. I know people who have built out there, in fact I've built out there and I've built just about on places where I've wondered why the County even issued a permit. So basically, it was just more of a lax type of atmosphere years ago and now because of the flood issues, all of a sudden we are starting to let people know that we are not just going to be randomly giving out permits to build houses as we were in the past.

T. Johnson: I wouldn't put it like that. My understanding is that years ago, prior to us doing floodplain delineations, no one was really aware of what was going on. Therefore, later when the delineations were done and information was made available, that's when the Flood Control District was in a position to more astutely evaluate, say your site plan, and give approval or disapproval.

Phillips: In addition to that, the Drainage Regulations came into effect in 1988. Now when you come in as an individual owner, we have the opportunity in the Unincorporated County to do a review on your particular plans and give you guidance and direction.

Martin: You look at the topo of the property?

Phillips: That's when the site inspector actually goes out and looks at the site and essentially talks with the individual about what can or can't be done.

Saager: Do we have a mechanism in place? Let's say hypothetically Mel and I wanted to do a joint venture – build a house out there – and we called the County up and say 'we want to know before we buy this thing whether or not we are going to be able to get permitted to build this house.' We call the County because we see something in the Preliminary Title Report. What is

the County going to do for us? Are they going to send someone out or tell us on the screen from a computer whether or not we're in the floodplain? How is that going to work?

Phillips: If it is in a delineated floodplain, then we can pull that up and tell you that you are in a delineated floodplain. If you are outside one of those areas that's delineated, when you send in your plans we'll look at them and review the drainage aspects to make sure you are not impeding or changing the washes. If you are, we will be talking with you about what you can and can't do.

Patel: At the property purchase stage you don't have plans, but you would be able to get guidelines as to what can be done?

Phillips: At this stage if we get the call, then we know there is an issue there. We can tell you whatever information we have available. If there is a delineated floodplain, we can tell you that. If not anything else, we can tell you that you are in this area that's characterized by braided washes and that as you start your site planning, make sure you account for these washes because you have the potential of being flooded.

Mr. Johnson asked Dave Johnson, Regulatory Division Manager, to make a few comments about this issue.

D. Johnson: We do have a procedure. In fact, I field a lot of these calls myself. A citizen calls concerning property they are proposing to acquire or we hear a lot from real estate agents and they want to determine what information we have available and whether the property is in the floodplain and whether we're studying the location and what kind of problems they'll be involved with. Until the studies are complete, we'll have to provide this service to anybody that is trying to acquire property or selling property. This area is a hotbed for development right now. We see a lot of interest in the sales of property.

Saager: I'm still not getting the answer I need. What happens? I call you and you tell me it's in a floodplain. Do I go back to the seller and say I want another 60 days to go the County and see if I'm going to be able to build a house here? If they go ahead and purchase the property, they get the plans for the house, they go to the County and County says 'yes, you called and I told you that you were in a floodplain,' and they submit the plans. Then what happens when they can't build a house? Is the County going to get sued?

D. Johnson: Hopefully, whatever parcel they have they've got room to place a house on it. We may have some parcels out there that have been split that are right in the middle of the Wash.

Saager: There's over 300 parcels out there that are an acre to an acre and a quarter, so that's a lot that I don't think can be built on.

D. Johnson: There very well will likely be some parcels that have been split that won't be built on.

Saager: But what are we going to do for those 300 people that are going to eventually want to build or sell to someone who wants to build. I don't think there's enough time in an escrow to really to get everything to where you're going to have your house ready to go, submit the plans to the County, get the County to give you the punch list back, and then resubmit it. Four to five months have gone by and then the guy wants to get it inspected and permitted to build and he's not going to be able to. Where are those lawsuits going to be funneled to, the County or the person that sells the property?

D. Johnson: It could be both, but hopefully there's not going to be a lot of those kind of situations.

Saager: But if I bought the property under the scenario I gave you, I'd be one of those people. So maybe it's happenstance that I happen to be on this advisory board, but I can tell you a whole bunch of people who've called me that said that they have a small parcel out there and when they retire, and they can't build on their land, they're first going to go to the deep pockets, which is the County, secondly they'll go to the seller, and thirdly they'll go to the broker.

D. Johnson: Something we're working on in the delineations efforts is to develop locations along the washes that are livable either because they are above the flood elevation or because it won't have a major impact on flow directions. Just because there's a flood limit on the floodplain

showing a loss, doesn't mean it's not doable. There are some cases where they are in the middle of the wash perhaps, and anybody could tell out on the site that it's not a place where you can build a structure. There are a lot of locations out there where there is higher ground and you could build a house there. The key will be some of the outstructures, fencing, etc., and managing what uses go on there. For instance, we're not going to see a lot of block walls go out there because they divert flows, but you might see a lot of post and rail type fencing. This isn't your typical floodplain delineation situation because the water spreads out from a lot of locations in an extremely shallow flow. It's going to still show to be in the floodplain, but it's not an area necessarily that you can prohibit all development. What the public is going to see are some delineations that aren't quite consistent with the types of floodplain/floodway delineations we have in some of our other watercourses. We're going to see what might be described as a drainage corridor along those main sandy-bottom channels and then for areas that are still in the floodplain, structures would have to be elevated to be protected from erosion. This area is really a site by site situation, which is why it is so important for people to get in touch with us before they do any acquisition of property out there and way before they start coming in for building permits to get the information we have.

Saager: Mr. Stapley is a wonderful person, but he's also a politician. I can't for the life of me imagine why he directed the Flood Control District to look into this. People are up in arms and the lawsuits are going to come from the people that have one acre next to someone that built a house two years ago. By changing the rules mid-stream, costs are going to be added on for building a house. I can't imagine why this thing is being implemented. Mr. Chairman, I will have to abstain from voting because I own a lot of property out there and I've sold a lot of property. Julie, I don't know if you've talked with Supervisor Stapley about this, but this thing is just a can of worms. I don't know why all of a sudden now we are bringing this kind of thing forward. I have people potentially threatening to sue me and a lot of other brokers out there.

Lemmon: I haven't talked directly with Mr. Stapley on this, so I can't answer that question. I believe staff has talked with him.

Saager: Who has talked directly with Don Stapley addressing this issue?

Phillips: Mike Ellegood and I have met with him to discuss this and this is the action out of that meeting.

Lemmon: Mr. Saager, it's my duty as the attorney for the District, if you have an interest you probably should abstain from participating in the discussion – not just from voting, but from participating in the discussion because obviously that has a big effect on how the voting goes. I need to ask you do that since you've disclosed your interest.

Saager: Then you show me where it says that. I'm representing the people of Rio Verde, I'm not here representing the County. If you want to show me the Bylaws, Julie, I'll keep my mouth shut.

Lemmon: It has to do with you saying you have a personal interest and when you have that personal interest in the property, that's what triggers the need to abstain.

Saager: I don't have any more property out there, but I have people out there that are friends of mine that I've sold property to.

Lemmon: My mistake, I misunderstood what you said, I thought you said you had some personal property that you owned out there and that's what was triggering my comments. Definitely, if it's just other people's property you are concerned with, that's not a problem.

Patel: Are we talking about doing anything different here from what we've done elsewhere? In terms of opening ourselves up to liability, we've done this before, right? Someone has built and then we have new information and the later development is required to meet our standards. Obviously, people get a little upset about it, but it's part of the process. Isn't that something that happens quite often?

T. Johnson: Yes, and it's our obligation to inform the public when we do these studies if there is a problem, they need to know it. Mr. Stapley's concern was to make sure the public was informed and the information we have is made available. Personally, I would want to make sure

that if Mr. Saager was going to buy property out there he was informed that there could be a problem and I would suggest that if he called in to the Flood Control District, we might say this area could be subject to flooding, why don't you come down and talk with us. And, by the way, if you are going to open up an escrow, I'd probably do it longer than 30 days because you may need to spend a little time and a little money doing a feasibility study, you'll need a topo map, you'll need to know some elevations, and have a rough idea of where you want to site your house. Our staff daily reviews the formal plans, but there is nothing to keep us from giving you some preliminary feedback based on the plan that has been developed, assuming that our plan has gotten to your property and there is enough information to share with you.

Saager: I think that's great and maybe we should have been doing this a long time ago. My point is – and the people are up in arms out there – now all of a sudden things are being enforced, so hypothetically someone goes out there and buys an acre five years ago and the guy next to them buys an acre. The guy five years ago buys and builds and the other guy that buys at the same time now wants to build, he either can't build there because he's sitting on a wash or a floodplain, or he's going to have to build up. It's going to cost him another \$15-20,000, and that's where the frustration is coming with these people. I think disclosure is great, but I think the frustration is that people are saying 'now all of a sudden the County is enforcing a lot of this and so there goes this one-acre lot I bought five years ago that I wanted to build on when I retire is much more expensive than what I anticipated.'

T. Johnson: I think that's true – it's frustrating for everybody. What we find is that when we do floodplain delineations and we develop new information we have to disclose it and we can't do otherwise. It may be frustrating to the property owners. I can put myself in their shoes and feel frustrated. We've probably all been in a situation where we say 'oh, gee, just when it's my turn they change the rules.' Really, we haven't changed the rules. I don't think it's that we haven't been enforcing, we've been enforcing based on what information and knowledge we've had available. So, to an individual property owner we are not selectively saying 'gee, now that it's your turn, we're changing the rules.' I think the key point is don't panic yet. We're not telling them they can't build. The depth of flooding may only be six inches, which isn't that difficult to deal with and you're not talking about spending a lot of money if you have to raise your stem wall another foot or even two feet. What we want to make sure is that people really understand. The problem isn't going to be so much with the houses and stem walls, it's going to be when a lot of people out there want to start putting in block walls around their swimming pools and start to cover some of these washes and then flood the person next to them. We think an informed public, through this Resolution, will go a long way toward minimizing the impact and frustration.

Saager: I can see a lot of hungry commission brokers out there or realtors that this is how they make their livelihood. I don't know about you, but I know very few people who even read through a preliminary title report that don't understand real estate very well and that could be a whole list of requirements. Have we ever taken it to Jerry Holt or those people and require maybe that there is some serious disclosure be made so it just doesn't keep getting into this vicious cycle, that maybe these realtors disclose or the sellers disclose and let them know that there is a problem? The Board of Real Estate has these forms that you come out with – the seller/buyer disclosure forms and maybe try to contact some of those people and say there are flood issues and try to make more people aware. A lot of realtors who need to make that commission to feed their family might not bring that up and then who are they going to go after? They're going to go after the County because the County is the one with the deep pockets.

T. Johnson: I would respond by saying 'shame on them.' They have fiduciary responsibility to the buyer or the seller to make sure that the potential buyer is informed.

Lemmon: We have in the past, when the last real estate disclosure form was revised, attempted to get language in there that addressed floodplains. The last version that I saw said 'is the area in a floodplain' and there were three boxes that said 'yes' 'no' and 'don't know.' We wanted to try to get the 'don't know' off of the form so there would be an affirmative duty to check that. We

were not successful. I don't believe that form was revised to make it an affirmative duty, but we have in the past tried to work with the Department of Real Estate and also the organization that represents the realtors association to make that happen. Mr. Saager, if you have contacts, the Regulatory Division would love to work with you on that.

T. Johnson: We have discussed, once a Resolution has passed, looking at other means for informing the people in that area, and your comments are good comments regarding how we could go about doing that.

Saager: I think you bring up a good point, Julie. Those forms today are ridiculous. If I'm selling something, I'm going to check 'unknown' if I'm not 110% positive because who wants the liability. Everything on there says 'unknown' because the laws change, not only on an annual basis, but three or four times a years sometimes. Until we get some kind of teeth into this thing, in the end it's going to come back a lot on the County. I'll see what I can do on my end and if you can do what you can do on your end to try to make as good of exposure as we can. I think that it's a great presentation and I'm glad it's happening, but unfortunately we're addressing it now and it's going to be a problem for a year or two.

ACTION: It was moved by Mr. Martin and seconded by Ms. Long to approve staff recommendations. The motion carried unanimously with the exception of Mr. Saager who abstained for cause.

4) QUEEN CREEK WASH IMPROVEMENTS

Staff requested that this item be continued to a later date. The Town of Queen Creek requested that this item be pulled, pending further discussion with one of the contributors to the property.

5) TOWN OF CAREFREE TOWN CENTER DRAINAGE IMPROVEMENT PROJECT

Russ Miracle, Planning Branch Manager, presented IGA FCD 2001A010 with the Town of Carefree for the design, rights-of-way acquisition, utility relocations, construction, construction management and operation and maintenance for the Town Center Drainage Improvement Project.

The IGA provides that the Town will be the lead on the project, complete the designs, acquire all lands, construct the project, be responsible for operation and maintenance, and fund 50% of the project costs. The District will conduct reviews and inspections and fund 50% of the project costs (not to exceed \$550,000). The construction contract amount of the project is \$1,060,000.

ACTION: It was moved by Mr. Cherrington and seconded by Mr. Dovalina to approve staff recommendations. The motion carried unanimously.

6) BULLARD WASH CHANNEL IMPROVEMENTS PROJECT, PHASE II

Scott Vogel, Project Manager, presented Memorandum of Understanding MOU FCD 2001U020, which outlined the intent of the District and City of Goodyear regarding responsibilities for the project implementation.

Discussion:

Martin: Didn't we talk about this before that MCDOT or the City would put bridges in at Van Buren and the other main street where the low flow channels are?

Vogel: One of the highest priorities of the project is constructing the bridges across the washes. The way the IGA would be set up for design is it would provide that the project could be designed in phases so that that portion of the project could be designed first off. Currently we are looking at the District taking the lead on that, but there is potential for the City to take the lead as well.

Martin: Why would we be involved in building a bridge for the City of Goodyear?

Johnson: When we do channels and we have to cross major roads, those bridges are components of the channel. The bridge would have to be constructed if we put the channel in, so it becomes a component of the project costs. In discussions with Goodyear, they would have perhaps the availability of working with perhaps MCDOT with highway user funds and to develop sources for other funding that could be included in the project. Based on their cash flow ability as well as ours, we will look at prioritizing the critical components of the project and look for every available opportunity for funding that could come to both minimize our costs and Goodyear's costs. In Phase I we built a railroad bridge and we did the new bridge on MC85 because the channel had to go under the road.

Martin: Was the District involved in putting bridges at 7th Street, 7th Avenue, and Central Avenue on the Salt River? It's the same thing; you've got water that runs underneath. I don't know why the Flood Control District wants to improve their streets.

Johnson: On the examples you cited, that was on the Salt River and I'm not aware we had any specific projects in those locations. Any other bridges along the Salt were installed by the respective cities. A better example would be when the Corps of Engineers and the District entered into an agreement to build the Arizona Canal Diversion Canal. In all of the streets the ACDC had to cross, bridges were a component to that project cost. If we weren't doing Bullard Wash, I can assure you we wouldn't be building bridges.

ACTION: No action was required – for information and discussion only.

7) COMMENTS FROM THE DEPUTY CHIEF ENGINEER

Tom Johnson mentioned that Dave Johnson, Regulatory Division Manager, would be retiring from the District after 27 years of service. Joe Tram, Engineering Division Branch Manager, will replace Mr. Johnson.

Mr. Johnson noted that the District recently completed their bi-annual Prioritization Procedure workshop that Dick Perreault puts together for the cities. The cities and other District clients are invited to attend a presentation on any changes in the prioritization process and generally discuss what has been going on and what will happen in the future. Cost-share guidelines were also discussed with the cities and Mr. Johnson suggested that staff come back to the Advisory Board at a later date to share the results.

The Board of Directors met on Monday and tentatively approved the Flood Control District's budget subject to their final meeting in June whereupon the budget will be approved assuming there is no major public objections or changes.

Ms. Lemmon updated the Advisory Board on the Rockland Materials issue. On Friday the District's injunction against Rockland to stop their operation until they got a permit was heard in Superior Court, but unfortunately the District was not successful in getting the injunction. The Court made several findings of law; however, Ms. Lemmon had not received the Judge's written opinion so she will plan to give the Board more detail next month. The full evidentiary hearing on whether there was a diversion, obstruction or retardation of flow was set for October.

Ms. Lemmon handed out a document she received at a meeting of the Civil Deputies, which was prepared by the Attorney General's office and is used to brief the school boards and different agencies around the state. It addresses one of the issues that came up at the Board briefing, which is how to recognize a conflict of interest and what is a "remote" as opposed to a "substantial" interest.

8) SUMMARY OF RECENT ACTIONS

Actions of the Board of Supervisors were included in the FCAB packet.

8) OTHER BUSINESS AND COMMENTS FROM THE PUBLIC

There was no other business or comments from the public.

The meeting was adjourned at 3:15 p.m. by general consent.

Mike Saager
Secretary of the Board

Kathy Smith
Clerk of the Board